

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4088, 4089/95,

7649,7650,7651/93 & 5489/93

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

ARVINDBHAI B PATEL

Versus

GUJARAT STATE PHARMACY COUNCIL& ANR

Appearance:

MR AM RAVAL for Petitioners
MR SV KOPPAR for Respondent No. 1
Mr M R Anand, Government Pleader with Ms Harsha
Devani, AGP for the State

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 30/08/96

ORAL JUDGEMENT(COMMON)

In this group of Special Civil Application, common question involved is as to whether the respondent-Gujarat State Pharmacy Council (hereinafter referred to as 'Council') was right in cancelling the

registration of the petitioners as Pharmacist. As all the Special Civil Applications involved common question of law and fact, they are being disposed of by way of this common judgment. For convenience, facts from Special Civil Application No.4088/95 are taken as basic facts.

2. Respondent No.1 - Council was constituted in the year 1965 under the Pharmacy Act, 1948 (hereinafter referred to as 'the Act of 1948'). The Council grants registration to persons holding Diploma or Degree, as Pharmacist under the provisions of the Act of 1948. However, in the year 1976, an amendment was made inserting section 32B. By this amendment, the persons whose names were approved as 'qualified persons' before 31.12.1969 for compounding or dispensing of medicine under the Drugs and Cosmetics Act, 1940 and the rules made thereunder were also made eligible for the registration. The relevant amended provision reads as follows:

"32B. Special provision for registration of displaced persons, repatriates and other persons:

(1) Notwithstanding anything contained in section 32 or section 32A, a State Council may permit to be entered on the register

(a) the names of persons who possess the qualifications specified in clause (a) or clause (c) of section 31 and who were eligible, for registration between the closing of the First Register and the date when the Education Regulations came into effect.

(b) The names of persons approved as "qualified persons" before 31st December, 1969, for compounding or dispensing of medicines under the Drugs and Cosmetics Act, 1940 and the rules made thereunder.

(c) The names of displaced persons or repatriates who were carrying on business or profession of pharmacy as their principal means of the livelihood in any country outside India for a total period of not less than five years from a date prior to the date of application for registration.

(2) The provisions of clause (a) and (b) of sub-section (1) shall remain in operation for a

period of two years from the commencement of the Pharmacy (Amendment) Act, 1976."

Taking advantage of the amendment, the petitioner and the other persons made application in the year 1978 for registration as Pharmacists. They also submitted certificate purported to have been issued by the Drugs Controller, Madhya Pradesh and Director of Medical and Health Services, Madhya Pradesh, certifying that the petitioner was a qualified person as per the provision of section 32B(1)(b) of the Act of 1948. One of the sample certificates is reproduced as follows:

" DRUGS CONTROLLER AND DIRECTORATE OF MEDICAL AND
HEALTH SERVICES
(GOVT. OF MADHYA PRADESH), BHOPAL

No.QP/Drugs-IIGC-69 Date: 27.10.1969

CERTIFICATE

This is to certify that Mr A B Patel iof
Bhopal has been approved as a qualified person by
the licensing authority under Rules 65(15) of
Drugs and Cosmetics Rules 1945 and his name has
ibeen entered in the licences granted to M/s.Shah
Medical Stores, Rajpal Lane, Bhopal.

(sd/-)

(S N Agrawal)

L.C. and Dir. of M.H.S.(MP)"

(seal)

On the basis of the said certificate, the petitioner and others were granted registration as pharmacists in the year 1978.

4. The Gujarat State Vigilance Commission received certain information to the effect that a number of persons who are not qualified persons within the meaning of sub-section (1) of section 32B have obtained certificate fraudulently from the Gujarat State Pharmacy Council. The Vigilance Commission referred the matter to the CID Crime Branch for investigation. The investigation, revealed that during the period 1977-78, about 200 to 250 persons were granted registration on the basis of bogus certificate purported to have been issued by the Drugs Controller and Director of Medical Health Services, Madhya Pradesh and also by other authorities in

the State of Rajasthan. The Drugs Controller of Madhya Pradesh informed the investigating agency that no such certificates were ever issued by them and in fact it is the District Collector and District Magistrate who is competent authority to issue such certificates. It also revealed that the signatures of the officer who purported to have issued such certificates as well as the office seal on the certificate were fabricated. A letter dated 11.6.1980 sent by the Controller, Food and Drugs Administration, Madhya Pradesh and Director of Medical and Health Services, Madhya Pradesh is placed on record. The number of persons who were granted registration as Pharmacists under the provisions of Section 32B (1) of the Act of 1948 stated that the certificate alleged to have issued by the Drug Controller, Madhya Pradesh were not obtained by them personally and they did not know as to how the then Registrar Mansukhani of the Gujarat State Pharmacy Council had obtained such certificates. They also stated that they never resided in Madhya Pradesh. As per the record of police, large number of persons had indulged in obtaining registration on the basis of bogus certificate. On account of lack of infrastructures, It was not possible for the Council to initiate proceedings for cancellation of registration against all the persons at a time. Thus the Council started with initiation of proceedings against some persons and their registration were cancelled. One of such persons challenged the decision of the Council by way of filing Special Civil Application before this Court which was registered as Special Civil Application No.3848/81. This petition was rejected by this Court (Coram :A M Ahmadi, J. as His Lordship then was). The order reads as under:

"The manner in which the registration was obtained is quite eloquent from paragraph 3 and 4 of the petitioners' reply dated 11th August, 1979, in answer to the show cause notice. That clearly shows the manner to which the certificates were secured by the respective petitioners from the authorities in M.P./Rajasthan. It is on the basis of these certificates that the registration was granted. The averments made in paragraphs 3 and 4 of the petitioners' reply to the show cause notice make it clear that these certificates were obtained through the instrumentality of one Mohanlal Bharwani without the petitioners ever having gone and practised in that area. There is, therefore, little doubt that the certificates were not genuine ones and were obtained by the said Mohanlal Bharwani in a dubious manner. The registration based on the said certificate is

therefore, liable to be cancelled. In view of this, this petition under Article 226 of the Constitution does not deserve to be admitted for hearing.

The petition is therefore, summarily rejected.

Notice discharged. Interim relief vacated."

This Court found that the certificates were not genuine and they were obtained through one Mohanlal Bharwani without the petitioners ever having gone and practised in that area. The Court also found that Mohanlal Bharwani obtained those certificates in dubious manner. The proceedings against large number of such Pharmacists was not initiated as they did not apply for renewal, and against few action could not be taken for the reason that criminal prosecution was lodged against Mansukbhai and the entire papers were in the Court of Special Judge. After receipt of the record in the year 1989-90, the Council issued show cause notice dated 25.9.1991 to the petitioner. A reply to the said show cause notice was submitted to the Council. At this stage, intervention was made by the then Chief Minister Late Shri Chimanbhai Patel and the Council was advised that the persons who have obtained registration may be persuaded to surrender their registration certificates voluntarily by calling such persons in small groups. Pursuant to such suggestion, attempts were made to persuade such persons to surrender their registration certificates voluntarily by calling in group of 10 persons each. However, this attempt failed, and therefore, a fresh notice dated 12.8.1994 was give to the petitioner. The Executive Committee of the Council, having reasons to believe that the certificate and the application forwarded by the petitioner to the State Council was not correct and genuine and his name has been entered in the register on account of misrepresentation or suppression of the material fact, issued show cause notice dated 12.8.1994 as to why his name be not removed from the register under section 36(1)(i) of the Act of 1948. The petitioner submitted a detailed reply through his Advocate. The petitioner questioned the basis of formation of opinion by the Executive Committee, and therefore, asked that all those materials may be supplied to him the basis on which the Committee formed the opinion. The proceedings were also challengaed on the ground that the same were initiated after more than 13 years. The Executive Committee, after hearing the Advocate for the petitioner, arrived at the conclusion that name of the petitioner deserves to be struck off. from the roll of the register of the pharmacy maintained under the Act uof 1948 on

account of misrepresentation and by suppression of material fact and by not producing the genuine certificate. The decision of the Executive Committee was confirmed by the Council. Thus, the register of the Council under communication dated 2.11.1994 informed the petitioner that his name has been removed under section 36(1) read with section 36(3) of the said Act permanently from the register of the Pharmacy Council. The petitioner, therefore, was directed under section 36(5) of the Act to surrender the registration certificate issued to him, failing which he shall be liable for action under section 43(1) of the Act of 1948. The petitioner challenged the said decision before the State Government under the provisions of section 36 of the Act of 1948. The State Government, by its order dated 10.4.1995, rejected the appeal. By way of this Special Civil Application, the petitioner has challenged the order of the Council removing his name from the roll of the register maintained under the Act of 1948 and the order rejecting the appeal rejected by the State Government.

5. Mr A M Raval, learned Advocate appearing for the petitioner contends that the impugned order is ex-facie illegal and void as the entire enquiry has been conducted in disregard to the principles of natural justice and more particularly, the provisions of section 36 of the Act of 1948. He further submits that the petitioner was not supplied with the documents, the basis on which the conclusions have been arrived at by the respondent. In absence of the documents, the petitioner was not in a position to defend. It is also submitted that the Council confirmed the decision of the Executive Committee at the back of the petitioner inasmuch as even the copy of the report of the Executive Committee was not given to him. Mr A M Raval, learned Advocate for the petitioner relied on a decision of the Apex Court in the case of Union of India vs. Mohd. Ramzan Khan, reported in AIR 1991 SC 471. He also relied on a decision of the Apex Court in the case of T S Rabari vs. Government of Gujarat, reported in 1991(2) GLR 1035.

6. In order to appreciate the contention of the learned Advocate, it would be appropriate to briefly acquaint with the scheme and provisions of the Pharmacy Act, 1948. The Pharmacy Act 1948 was enacted to regulate the profession and practice of pharmacy. Looking to the high degree of specialisation in the field of medicine, it was thought that the profession of Pharmacy is required to be regulated. A Pharmacist is required to

compound, prepare, makes or dispense any medicine on prescription of medical practitioner. Commonly they are known as Pharmacists, Chemists, druggist, pharmacist, dispenser, dispensing chemist etc. Under the Act of 1948, registered pharmacist as defined under section 2(i) means a person whose name is for the time being entered in the register of the State in which he is for the time being residing or carrying on his profession or business of pharmacy. Section 29 casts duty on the State Council after its constitution to maintain the register of pharmacist in the State. Section 30 provides for constitution of a Registration Tribunal by Notification in Official Gazette. Section 31 provides for qualification for entry in the first register. Section 32 provides for qualification for subsequent registration. Section 32 (a) provides for a special provision for registration of certain persons. Section 32B provides for special provision for registration of displaced persons, repatriates and other persons. Section 36 provides procedure for removal of name of pharmacists from the register. It provides that the Executive Committee may order the name of the registered pharmacist removal from the register where it is satisfied after giving him a reasonable opportunity of being heard and after such further inquiry as it may think fit to make. Section 36 provides for 3 sets of circumstances -

- (i) where his name has been entered in the register by error or on account of misrepresentation or suppression of a material fact,
- (ii) where the registered pharmacist has been convicted of any offence or has been guilty of any infamous conduct in any professional respect which in the opinion of the Executive Committee, renders him unfit to be kept in the register
- (iii) where a person employed by him for the purpose of his business or pharmacy has been convicted of any such offence or has been guilty of any such infamous conduct as would, if such person were a registered pharmacist, render him liable to have his name removed ifrom the register under clause (ii).

Sub-clause (3) of section 36 provides that an order under sub-section (1) shall be subject to confirmation by the State Council and shall not take effect until the expiry of 3 months from the date of confirmation. Under

sub-section (4) remedy has been provided by way of appeal to the State Government. Section 41 provides for penalty for falsely claiming to be registered pharmacist. Section 42 provides penalty for dispensing by any registered persons.

7. Thus it emerges on analysis of provisions of the Act of 1948 that any person with whatever means cannot carry on profession of pharmacist without his being registered with the State Pharmacy Council. The name of the registered pharmacist can be removed from the register on misconduct as provided under paras 2 and 3 of sub-clause (1) of Section 36 as well as on the ground that such persons got his name registered on account of misrepresentation or suppression of material fact. The enquiry under section 36 contemplates compliance of the principles of natural justice. The decision of the Executive Committee is required to be confirmed by the State Council.

8. The question in the present Special Civil Application is whether the petitioner has been given reasonable opportunity of being heard by the Executive Committee as well as by the State Council. The contention of the petitioner at the first instance, is that in spite of the fact that the petitioner asked for supply of the material document on the basis of which the Executive Committee formed the opinion against the petitioner, has not been supplied. It is submitted by Mr Raval that though there is no specific provision for supply of the documents but when the documents are demanded by the delinquent, it is obligatory for the authorities to supply such documents. Advancing arguments, he further submits that even at the stage of confirmation by the State Council, the copy of the report of the Executive Committee is required to be given to the delinquent so that he may submit his comments for consideration before the State Council. He strongly relies upon decision of the Apex Court in the case of Ramzan Khan (supra). This case is from service jurisprudence wherein the question before the Apex Court was as to whether the alteration of the provisions of Article 311 (2) under the Forty-Second Amendment of the Constitution doing away with the opportunity of showing cause against the proposed punishment, the delinquent has lost his right to be entitled to a copy of the report of enquiry in the disciplinary proceedings. The Court, referring to the earlier decisions of the Apex Court in the context of the effect of Article 311 (2), summed up the meaning of 'reasonable opportunity' as follows:

"The reasonable opportunity envisaged by the provision under consideration includes

- (a) an opportunity to deny his guilt and establish his innocence, which he can only do if he is told what the charges levelled against him are and the allegations on which such charges are based,
- (b) an opportunity to defend himself by cross-examining the witnesses produced against him and by examining himself or any other witnesses in support of his defence, and finally
- (c) an opportunity to make his representation as to why the proposed punishment should not be inflicted on him, which he can only do if the competent authority, after the enquiry is over and after applying his mind to the gravity or otherwise of the charges proved against the government servant tentatively proposed to inflict one of the three punishments and communicates the same to the government servant."

The Court after considering various decisions held that deletion of second opportunity from the Scheme of Article 311(2) of the Constitution has nothing to do with providing of a copy of the report to the delinquent in the matter of making his representation. The Court further held that even though the second stage of the inquiry in Article 311 (2) has been abolished by amendment, the delinquent is still entitled to represent against the conclusion of the Inquiry Officer holding that the charges or some of the charges are established and holding the delinquent guilty of such charges. It is further held that supply of a copy of the inquiry report along with recommendations, if any, in the matter of proposed punishment to be inflicted would be within the rules of natural justice. The Constitution Bench in the case of Managing Director, ECIL v. B Karunakar & Ors., reported in 1993(2) SCC 727 took the view that before an employee is punished in a disciplinary enquiry, a copy of the enquiry report should be furnished to him. It was also held that non-furnishing the report amounts to denial of justice. The Court, however, held that just because it is shown that the enquiry report is not furnished, the punishment ought not to be set aside as a matter of course. The Court quoted following para from Ramzan Khan's case (supra) as under:

"31. Hence, in all cases where the enquiry officer's report is not furnished to the delinquent employee in the disciplinary proceedings, the Courts and Tribunals should cause the copy of the report to be furnished to the aggrieved employee if he has not already secured it before coming to the Court/Tribunal and give the employee an opportunity to show how his or her case was prejudiced because of the non-supply of the report of the report. If the non-supply of the report would have made no difference to the ultimate findings and the punishment given, the Court/Tribunal should not mechanically set aside the order of punishment on the ground that the report was not furnished as is regrettably being done at present."

Recently the Apex Court in the case of State Bank of Patiala v. S K Sharma, reported in 1996 (3) SCC 364 summarised the principles emerging from various decisions of the Supreme Court. In substance, the Court held that the test is whether non-supply of documents caused any prejudice to the delinquent or not. In that case. the trial court found that no prejudice was caused on account of non-supply of the enquiry report. In appeal, the High Court held that prejudice was caused to the delinquent. The Apex Court found that the High Court had not referred to the aspect of prejudice at all, the Court considering the facts of the case held that no prejudice was caused on account of non-furnishing of the copies of the statement of witnesses. The Apex Court thus, set aside the judgment of the High Court and confirmed the judgment of the Trial Court.

9. In the case of Board of Mining Examination v. Ramjee, reported in AIR 1977 SC 965, the respondent was a short-firer. This being a risky and technical job, he was required to possess a certificate for it. He handed over an explosive to an unskilled hand who fired it, an accident occurred and one workman was injured. The Regional Inspector of Mines immediately conducted an enquiry into the case of the accident and found that the work was wrongly entrusted to an unauthorised person and thereby he contravened the relevant Coal Mines Regulations. The Regional Inspector gave reasonable opportunity for explanation to the respondent and after considering the materials before him, forwarded the papers to the Chairman of the Board of Mining Examination for cancellation of the certificate of the respondent. The High Court, relying upon the Regulation No.26 held that the order of cancellation was illegal for the reason

that without suspending the officer, the Regional Inspector could not report the matter to the Board and without such a report following upon a suspension, the latter could not take a decision in the matter. It was further held that the Regional Inspector has no power to recommend, but only to report to the Board and thirdly, the Board should have given a fresh opportunity to be heard before cancellation of the certificate and in absence there was violation of principle of natural justice, voiding the order. The Apex Court, while setting aside the judgment of the High Court, held that in the facts of the case fairness was shown by the decision maker and as such no complaint could be made of breach of natural justice. The Court observed, thus

"Natural justice is no unruly horse, no lurking land mine, nor a judicial cure-all. If fairness is shown by the decision-maker to the man proceeded against, the form, features and the fundamentals of such essential processual propriety being conditioned by the facts and circumstances of each situation, no breach of natural justice can be complained of. Unnatural expansion of natural justice, without reference to the administrative realities and other factors of a given case, can be exasperating. We can neither be finical nor fanatical but should be flexible yet firm in this jurisdiction. No man shall be hit below the belt-that is the conscience of the matter."

10. In the instant case, it is to be borne in mind that it is not the case of inflicting any punishment. It is a case where the name of the petitioner has been removed from the Register of Pharmacist on the finding that he had obtained registration on misrepresentation of fact. Though the investigation has taken a lot of time, in substance, the case against the ipetitioner is that he submitted application for registration on 28.2.1978 and at column 6, following information was given:

"6. Description of Qualifications
of which registration is desired

Degree or Diploma	Institution	Date of ob- taining the Degree/diploma

Q.P. (Quali- Medical Stores, Bhopal -
fied person) M.P.

In column iNo.7 (b) regarding particulars of previous employers, no information was stated. There is a letter dated 11.6.1980 of the Controller of Food and Drugs Administration, Bhopal, M.P. and one letter dated 11.6.1980 from the Directorate of Health Services, M.P. wherein it is stated that the certificate for qualified persons under the Pharmacy Act, 1948 were never issued either by the Drugs Controller, M.P. or by the Directorate of Medical and Health Services, M.P. during the period 1966 to 1969. It was further stated that in Madhya Pradesh, the licensing authority for issuing such certificates is District Magistrate/Collector of the District. This was the total material on which the Executive Committee has made recommendation to the State Council. The Executive Committee had shown the said letter to the petitioner as well as to the learned Advocate who had appeared before them on 23.9.1994 for the petitioner. The report of the Executive Committee deals with number of other persons and therefore, it was not necessary to give the entire report to the petitioner. So far as the petitioner is concerned, the only material which has been used against the petitioner is (1) the information given in the application for registration, certificate produced by him and (2) the letter of the Director and the Directorate of Health Services. A certificate as reproduced in the earlier part of the judgment indicates that name of the petitioner has been entered in the licence granted to M/s.Shah Medical Stores, Rajpal Lane, Bhopal. At the first instance, according to the police investigation, no such certificate was ever issued by the Drugs Controller and Directorate of Health Services. The investigation papers also show that it was disclosed by the petitioner and persons like him that they never visited Madhya Pradesh. However, that part of statement before the investigating agency has not been relied on by the respondent authority. Thus, the fact remains that the petitioner is not in a position even today to show that prior to 1969 he ever served with M/s.Shah Medical Stores, Bhopal. Unless he had gained experience by working with M/s.Shah Medical Stores, Bhopal, there was no question of issuing the certificate is the simple fact which clinches the entire issue. Thus, in my opinion, no prejudice has been caused to the petitioner by not supplying any document and particularly, the report of the Executive Committee. It may further be noticed that the statute does not provide for opportunity of hearing at the stage of confirmation of the decision of the

Executive Committee by the State Council. The impugned action has been taken, after giving notice to the petitioner. During enquiry, relevant documents were shown to the petitioner and his Counsel and they were fully heard. The report of the Executive Committee was further scrutinised by the State Council. Thus, in my view, in the facts of the case, complete fairness is shown. The report is produced before this Court. The relevant extract from the report which pertains to the petitioner were read. Nothing is shown how any prejudice is caused by non-supply of the said report. Thus, in my view, fairness has been shown to the petitioner by the decision maker and as such, the complaint regarding breach of natural justice is not sustainable.

11. However, it is brought to my notice that in the impugned order, direction is given to remove the name of the petitioner permanently w.e.f. 23.12.1994. It is a plain and simple case of removal of the name of the petitioner from the register on account of misrepresentation and it is not at all a case of punishment, and therefore, the use of the word 'permanently' is erroneous and it deserves to be struck off.

12. It is not in dispute that the facts in all these Special Civil Applications are identical, and therefore, the conclusion arrived at in the main Special Civil Application i.e. Special Civil Application No.4088/95 equally applies to all other Special Civil Applications.

13. Before parting with, I may say that the Pharmacy Council is not in a position to make any statement as to what has happened with respect to the cases in which the police has found that on misrepresentation, the registration was obtained. It is pointed out that because of the court proceedings, the Council could take up the matter only after 1990. It is also stated that the council is not fully equipped with staff to hold enquiry expeditiously. It is an unfortunate situation. The State Government is directed to look into the matter and depute temporary staff to the Pharmacy Council in order to complete the enquiry under section 36 against the left out persons within a period of six months from the date of receipt of the writ. The Registrar, Pharmacy Council shall submit the progress report to this Court on every first Monday of the month.

14. In view of the aforesaid, I find no merit in this group of Special Civil Application and they are dismissed with slight modification that the word "permanently" in

the impugned order shall stand struck off.

Rule discharged.

Learned Advocate for the petitioner submits that since there has been interim relief in favour of the petitioners in Special Civil Applications No.4088 and 4089 of 1995, the same may be continued for a further period of two weeks. This prayer is opposed by the learned Advocate for the Pharmacy Council. However, considering the facts of the case, the interim relief granted by this Court is directed to be continued till 16.9.1996.

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